PUBLIC PROSECUTOR

v.

ARJAN SINGH HARNAM SINGH

HIGH COURT MALAYA, IPOH
ANUAR ZAINAL ABIDIN J
[CRIMINAL TRIAL NO. 2 OF 1984]
24 SEPTEMBER 1985

CRIMINAL LAW: *Dangerous Drugs - Trafficking - Police acting on information received from anonymous caller - Road block - Accused one of four persons travelling in taxi - Plastic bag containing drugs found under accused's feet - Burden of proof - Knowledge.*

The police acting on information had set up a road block at Sungei Siput - when a taxi bearing registration No. AE 5122 approached the road block, the police stopped the taxi and on conducting a search, found a plastic bag under the accused's feet. The plastic bag contained dry leaves suspected to be ganja.

At the close of the prosecution case, the Court was satisfied that a *prima facie* case against the accused had been established.

In his defence the accused's evidence was that he was carrying the plastic bag for a friend, who travelled in the same taxi, but had alighted from the taxi at Kuala Kangsar.

The question before the Court was whether the accused had knowledge that the plastic bag contained ganja.

Held:

[1] The accuracy of the information on which the police acted upon could only indicate that the anonymous caller was the friend of the accused.

[2] As it was not unusual for a friend to carry a bag for another friend, it was not unreasonable that the accused had no knowledge of what he was carrying.

[3] The evidence of the accused was greatly corroborated by the taxi driver.

[4] In the circumstances of the case the defence had created a doubt on the prosecution case.

[Accused acquitted and discharged.]

For the accused - Bachan (Kartar with him); M/s. Bachan & Co.
For the prosecution - DPP Sarala Pillai

JUDGMENT

Anuar Zainal Abidin J:

The accused is charged as follows:

> That you on 27 October 1983 at about 2.30 p.m. in a motor-taxi No. AE 5122 in front of Sungei Siput (N) Police Station, in the District of Sungei Siput (N), in the State of Perak, did traffic in dangerous drugs, to wit 992 gm. of ganja, and that you have thereby contravened the provisions of para. (a) of sub-section (1) of s. 39(B) of the Dangerous Drugs Act 1952 and punishable under sub-section (2) of s. 39(B) of the said Act.

The accused was acquitted and discharged after the defence was called and the accused gave evidence.

The prosecution case briefly is this.

On 27 October 1983 DSP Mazlan (PW2) attached to the Cawangan Anti Dadah, Headquarters Ipoh received a phone call from an anonymous person giving him information that a male Sikh of about 35 years, travelling in a taxi bearing the registration number AE 5122, was on his way from Taiping to Ipoh carrying a plastic bag containing ganja. Immediately at 1.30 p.m. DSP Mazlan contacted Insp. Nazlan (PW3) attached to the Sungei Siput police station to put up a road-block at Sungei Siput. Following this instruction, Insp. Nazlan set up a road-block in front of the Sungei Siput police station at about 2.00 p.m.

At about 2.30 p.m. a Mercedes Benz taxi bearing registration number AE 5122 travelling from the direction of Taiping arrived at the road-block. The taxi was stopped. There were four persons in the taxi including the driver. One of them is a male Sikh seated at the rear of the taxi. He is the accused.

Insp. Nazlan opened the door next to the accused and he saw a plastic package (Exb. P3) on the floorboard under the accused's feet. He took possession of the plastic package and examined the contents. He found some leaves which he suspected to be ganja. The accused was then arrested and subsequently charged with the present charge.

The Exhibit P3, was sent to the chemist (PW4) for analysis. The chemist found that the plastic package (Ex. P3) contained 992 grammes of cannabis.

The taxi driver, Mohd. Affandi bin Talip Ali (PW8) who gave evidence stated that he picked up the accused who was together with another male Malay at the Taiping taxi stand. The accused had a plastic bag similar to Ex. P3 with him. The male Malay who spoke to him told him that they were going to Ipoh.

The taxi left at 1 p.m. There were four passengers including the accused and the male Malay.

The male Malay sat in front next to the driver (PW8). When they reached Kuala Kangsar, this male Malay got down in front of the hospital. PW8 said that just before reaching Kuala Kangsar, this male Malay told him there was a relative who was ill and that he (the male Malay) would get down at the hospital in Kuala Kangsar. After the male Malay got down at Kuala Kangsar, PW8 and the other passengers proceeded towards Ipoh. They were stopped at the road-block at Sg. Siput and subsequently detained by the police.

The evidence of PW8, the taxi driver, is significant and has a lot of bearing later on when considering the defence.

At the close of the prosecution case, I was satisfied that the prosecution had established a *prima facie* case against the accused and the accused was called upon to give his defence.

I was satisfied that the accused was found possession of the drugs. The evidence of Insp. Nazlan (PW3) is conclusive that the accused was in possession of the drugs. He found the plastic package containing the ganja under the accused's feet when the taxi was stopped at the road-block. This evidence is corroborated by the evidence of the taxi driver (PW8) who saw the accused holding the plastic package at Taiping before the accused boarded the taxi. Both these evidences confirmed the information received by DSP Mazlan (PW2). There is no doubt in my mind that the accused was in possession of the drugs.

It was also established the leaves found in the plastic package is cannabis or ganja which is a dangerous drug as defined under the Dangerous Drugs (Amendment) Act 1983.

I am satisfied that the chemist has analysed the exhibit in accordance with the provision of the Act in arriving at his conclusion. The total net weight of cannabis found is 992 grammes.

The accused in his evidence stated that he was carrying the plastic bag for the male Malay who got down from the taxi at Kuala Kangsar. This man is known to him as Omar. He has known Omar for about two years before the incident.

The accused stated that on 27 October 1983 he had gone to Taiping to fulfil a vow at the Kamunting Sikh Temple. From there he had gone back to Taiping bus stand where he met Omar. On being asked he told Omar that he was going to Ipoh. Both of them then went to the taxi stand to get a taxi. Omar was carrying two bags. He gave the accused one bag to carry. The accused carried the bag and had it with him in the taxi.

They left Taiping at 1 p.m. When they reached Kuala Kangsar, Omar got down. He told the accused that his relative was ill in hospital and he was getting down there. He also asked the accused to pay the fares for him. This is confirmed by the taxi driver in his evidence earlier. According to the accused, Omar asked him to deliver the bag to Omar's house in Kg. Chempaka Sari, Pasir Puteh, Ipoh.

When they got to Sg. Siput, the taxi was stopped and the accused was arrested.

The accused stated, that Omar is now under remand in prison awaiting trial for another offence relating to cannabis. This is confirmed by the Court's records (Ex. D13) produced by the Senior Registrar of the Sessions Court Ipoh (DW2).

The accused's evidence is corroborated to a great extent by the evidence of the taxi driver (PW8). PW8 saw the accused and a male Malay at Taiping where both of them boarded his taxi. From his evidence, it would appear that it was the male Malay who played the leading role.

Furthermore, the information given to DSP Mazlan was given at about 1 p.m. which is the time the taxi left Taiping. The accuracy of the information could only indicate the familiarity of the person with the facts. There is strong probability that the informer is Omar as stated by the accused.

It is settled law that the burden of proof on the part of the accused is merely to create a reasonable doubt in the prosecution case. The accused does not have to prove his case beyond reasonable doubt. In this case, I am of the opinion, the defence has created a doubt in my mind as to the prosecution case. It is probable that Omar had given the bag (Ex. P3) to the accused to carry. For some unknown reason Omar subsequently passed the information to the police which led to the accused's arrest.

From the evidence, if it is true that the bag was given to the accused by Omar, he (the accused) would not know what was in the bag. He had therefore no knowledge of what he was carrying. He was merely carrying the bag for Omar. It is not unusual for a friend to carry a bag for another friend. Since the accused had known Omar for two years, it is therefore not unusual for him to carry the bag for Omar. Merely carrying something for someone else without knowing what he is carrying is not a crime. It is certainly not trafficking.

The accused's explanation to my mind is reasonable and probable.

For the above reasons I acquitted and discharged the accused.

Also found at [1989] 1 CLJ 462